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DKR Consulting, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DKR Consulting, LLC

Plaintiffs,

vs.

PINTEREST, INC.

Defendants.

Case No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff, DKR Consulting, LLC, through its counsel, brings this Complaint for patent infringement against Defendant, Pinterest, Inc. ("Pinterest"), as follows.

I. JURISDICTION

1. This is an action for patent infringement under Title 35 of the United States Code §§ 281 and 271 (a) (b) and/or (c) for infringement of United States Letters Patent Number 9,679,298 ("the '298 Patent").

1 2. This Court has jurisdiction over patent claims under 35 U.S.C. § 281 and 28 U.S.C.
2 §§ 1331, 1338(a) providing for federal question jurisdiction of actions relating to patents and
3 trademarks.

4 **II. INTRADISTRICT ASSIGNMENT**

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6 3. Defendant is currently engaged in making components of infringing systems, using
7 infringing systems, inducing others to use infringing systems, offering for sale and/or selling
8 components which enable infringement of infringing systems which infringe claims of the '298
9 Patent throughout the United States, including use within this judicial district. Defendant is
10 inducing others to use and is contributing to the use of infringing systems.

11 4. Jurisdiction and Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and
12 (c) and § 1400(a) and (b). Plaintiff is a North Carolina Corporation. Defendant, is a California
13 corporation with principal place of business in San Francisco (San Francisco County) within this
14 Judicial District. Defendant uses accused systems and distributes infringing components in this
15 Judicial District and throughout the United States.

16 **THE PARTIES AND GENERAL ALLEGATIONS**

17 5. Plaintiff is a North Carolina corporation and is the owner by assignment of the entire
18 interests in and to the '298 Patent, issued on June 13, 2017, naming Mr. David Robb, Mr. Grant
19 Neerings, Mr. Cameron Patterson, Mr. Joseph Rodriguez, Mr. Quinton Richard Harris, and Mr.
20 Benjamin Cook as the inventors.

21 6. Defendant, upon information and belief, is a California corporation with its
22 principal place of business in San Francisco.

23 7. Plaintiff's principal, Mr. David K. Robb ("Mr. Robb") was the CEO/Owner of DIY
24 Media, Inc., which previously owned the '298 Patent.

25 8. DIY Media, Inc. had a business relationship with Defendant. DIY Media's business
26 relationship with Defendant included having DIY Media's ShopPost platform integrated with
27 Pinterest's platform for a period of time.

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1 9. In or about April, 2017, DIY Media, Inc. assigned the '298 Patent to Mr. Robb and
2 in or about August of 2017, Mr. Robb and Pinterest, represented by Mr. Henry Lien, entered into a
3 Non-Disclosure Agreement ("NDA") to discuss the possibility of entering into a patent licensing
4 agreement for the '298 Patent.

5 10. After the NDA was signed, Mr. Robb provided Defendant with DIY Media's
6 documents, including the '298 Patent. Following the exchange of documents and of emails, DIY
7 Media attempted for over 3 months to reach Defendant and its representative Mr. Henry Lien
8 without success.

9 11. Defendant's exchange did not result in a licensing agreement for the '298 Patent.

10 12. After the exchange between Mr. Robb and Defendant, the '298 Patent was assigned
11 to Plaintiff.

12 13. Upon information and belief, Defendant makes, uses, sells and offers for sale and
13 distributes material components of accused systems nationwide in the United States. Defendant
14 induces the use of, and contributes to the use of the accused systems by others within the United
15 States. Accused systems include systems for the distribution of multimedia content and the
16 consummation of transactions between content owners, content distributors and consumers in a
17 manner claimed in the '298 Patent. Defendant's systems which infringe include Pinterest's
18 "Buyable Pin" system (the "Accused System").

19 14. Details of the specific correspondence between the elements of the claims of the
20 '298 Patent and the presently identified Accused System are further detailed in the Claim Charts
21 attached hereto as **Exhibit A** and incorporated fully by reference into this Complaint.

22 **A. US 9,679,298 – THE PATENT IN SUIT**

23 15. The '298 Patent is entitled "System and Method for Distributing Multimedia
24 Content."

25 16. The '298 Patent includes exemplary independent system claim 1:

26 1. A system comprising:

27 a display device configured for displaying a web browser;
28 a memory configured for storing data;
 a processor communicatively coupled to the memory and

1 the display device, the processor configured for
2 displaying, in the web browser, a portable web widget,
the web widget comprising:

3 a content retrieval component communicatively coupled
4 to an application server over a computer communications
5 network, the content retrieval component executed by the
6 processor to retrieve one or more multimedia display files
7 and metadata into an embedded electronic commerce
8 store in the web widget, the multimedia display files and
9 the metadata retrieved from a storage resource
10 communicatively coupled to the application server and
stored in the memory after the web widget enters an
active operational mode, the web widget entering the
active operational mode after a user clicks on the web
widget in an inactive operational mode in the web
browser;

11 a content preview component executed by the processor
12 for streamed execution of a portion of one or more
13 multimedia content files from a multimedia content
14 distribution system executing on the application server,
15 the streamed execution performed in the web browser
16 based on a selection request made on the web widget in
the active operational mode for streamed execution of at
least one of the one or more multimedia content files; and
a transaction processing component executed by the
processor to execute and complete a commercial
transaction in the embedded electronic commerce store
pertaining to the one or more multimedia content files;
wherein the one or more multimedia display files and
metadata are associated with each of the one or more
multimedia content files;

19 wherein the multimedia display files, the multimedia
20 content files and the metadata are created under control of
a content owner; and

21 wherein the multimedia content files are associated with
22 the web widget by at least one of the content owner and a
23 content distributor using the multimedia content
distribution system.

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1 17. U.S. Patent 9,679,298 includes exemplary independent system claim 24:

2 24. A system comprising:

3 a display device configured for displaying a web browser;
4 a memory configured for storing data;
5 a processor communicatively coupled to the memory and
6 the display device, the processor configured for
displaying, in the web browser, a portable web widget,
the web widget comprising:

7 a content search component communicatively coupled to
8 an application server over a computer communications
9 network, the content search component executed by the
10 processor to search for one or more multimedia content
11 files accessible from the application server after the web
widget enters an active operational mode, the web widget
entering the active operational mode after a user clicks on
the web widget in an inactive operational mode in the
web browser;

12 a content retrieval component communicatively coupled
13 to the application server over the computer
14 communications network, the content retrieval component
15 executed by the processor to retrieve one or more
16 multimedia display files and metadata associated with
each of the one or more multimedia content files into an
embedded electronic commerce store in the web widget
from a storage resource communicatively coupled to the
application server;

17 a content preview component executed by the processor
18 to enable the multimedia content distribution system to
19 perform a streamed execution of a portion of each of the
20 one or more multimedia content files in the web browser
on the client device based on a selection request from the
user for streamed execution of at least one of the one or
more multimedia content files; and

21 a transaction processing component executed by the
22 processor to complete a commercial transaction in the
23 embedded electronic commerce store pertaining to each
of the one or more multimedia content files;

24 wherein the multimedia display files, the multimedia
25 content files and the metadata are created under control of
the content owner; and

26 wherein the multimedia content files are associated with
27 the web widget by at least one of the content owner and a
content distributor using the multimedia content
distribution system.

B. THE ACCUSED SYSTEM

18. Defendant provides software and web widgets for use in a wide variety of processors for the distribution of multimedia content and the consummation of transactions between content owners, content distributors and consumers in a manner claimed in the '298 Patent. Defendant's software enables the use of Defendant's web widgets which are a material component of the patented invention, are especially made to practice the invention and are not staple articles of commerce and induce the use of infringing systems. The web widget presently known to Plaintiff is Defendant's "Buyable Pin" widget. Plaintiff anticipates identification of additional infringing widgets during discovery.

19. Details of the specific correspondence between the elements of the claims of the patents-in-suit and the presently identified accused system is detailed in the Claim Charts attached hereto and incorporated fully by reference into this Complaint.

C. DIRECT INFRINGEMENT OF US 9,679,298

20. Consumers are the direct infringers of the claimed system which includes the screen, processor and memory of the user's device, as well as on-line memory. Defendant's software runs on the processor of the consumer's device, displays on the screen and uses memory. Defendant's "Buyable Pin" widget allows consumers access to a portable web widget for distribution of multimedia content over a computer communications network with a transaction processing component operative to execute and complete a commercial transaction in the embedded electronic commerce store pertaining to multimedia content files in a manner claimed in the '298 Patent.

21. Plaintiff is entitled to damages for direct infringement as set forth in 35 USC § 284 and § 285.

III. COUNT I

D. INDUCING INFRINGEMENT OF US 9,679,298

22. Defendant has infringed and continues to infringe one or more of the claims of the '298 Patent under 35 U.S.C. 271(b) by inducing others to infringe one or more of the claims of the '298 Patent. Defendant's inducing activities include providing software to consumers which is

1 used to form infringing systems which infringe the claims of the '298 Patent and through inducing
2 others to use and provide software to consumers which is used to form infringing systems, and
3 through the activities of Defendant in connection with the sale and/or use of systems which include
4 a systems for the distribution of multimedia content and the consummation of transactions between
5 content owners, content distributors and consumers in a manner claimed in the 298 Patent,
6 including the Accused System described above.

7 23. Defendant has induced and continues to induce others to infringe one or more of the
8 claims of the '298 Patent, through the distribution of software which is a material component of the
9 patented invention, is especially made to practice the invention and is not a staple article of
10 commerce and induces the combination into and use of infringing systems, and which forms an
11 infringing system and is used in an infringing manner to infringe one or more of the claims of the
12 '298 Patent.

13 35 U.S.C. § 271(b) states:

14 "Whoever actively induces infringement of a patent shall be liable as an infringer."

15 24. Plaintiff is the owner of all rights, title and interest in and to and has had standing to
16 sue for infringement of the '298 Patent.

17 25. The '298 Patent, as set forth in the claims, protects: systems for the distribution of
18 multimedia content and the consummation of transactions between content owners, content
19 distributors and consumers. Defendant uses and sells components of such systems. Defendant's
20 software is actuated by consumers who click on or activate the widget. Defendant's software has
21 no significant non-infringing use. Defendant encourages consumers to use its "Buyable Pin"
22 system in an infringing manner. Defendant provides information which includes a description of
23 the infringing components and the manner of use of the components. Defendant's actions induce
24 and encourage infringing use. Thus, Defendant induces infringement when others use the accused
25 system components which have been provided by Defendant, with Defendant's knowledge that
26 such combined systems infringe the '298 Patent.

27 26. Defendant's knowledge of inducement is evidenced by the NDA entered between
28 Mr. Robb and Defendant to discuss the possibility of entering into a patent licensing agreement for

1 the '298 Patent.

2 27. Upon information and belief, Defendant currently infringes and has infringed one or
3 more of the claims of the '298 Patent under 35 U.S.C. § 271(b) by the activities as described above.

4 28. Plaintiff is entitled to recover damages from Defendant including reasonable
5 royalties and lost profits, sustained as a result of Defendant's infringing acts under 35 U.S.C. § 271
6 and § 284.

7 29. Defendant has been aware of Plaintiff's rights in the patents in suit and of Plaintiff's
8 intent to enforce those rights. Defendant has, with full knowledge of those rights, willfully
9 proceeded to infringe, in disregard of Plaintiff's rights. Plaintiff is entitled to enhanced damages
10 under 35 U.S.C. § 284.

11 30. Plaintiff is entitled to damages for induced infringement as set forth in 35 USC §
12 284 and § 285.

13 **IV. COUNT II**

14 **E. CONTRIBUTORY INFRINGEMENT OF US 9,679,298**

15 31. Defendant has contributed to the infringement and continues to contribute to the
16 infringement of one or more of the claims of the '298 Patent under 35 USC 271(c) by contributing
17 components to the use of the system which infringe the claims of the '298 Patent, such components
18 constituting a material part of the invention, and especially adapted for use in an infringement of
19 the '298 Patent. The components are not staple articles or commodities of commerce suitable for
20 substantial non-infringing use. The contribution includes sale and/or distribution within the United
21 States of such components for infringing use by Defendant's customers and users.

22 35 U.S.C. § 271(c) states:

23 "(c) Whoever offers to sell or sells within the United States or
24 imports into the United States a component of a patented
25 machine, manufacture, combination or composition, or a
26 material or apparatus for use in practicing a patented process,
27 constituting a material part of the invention, knowing the same
28 to be especially made or especially adapted for use in an
infringement of such patent, and not a staple article or
commodity of commerce suitable for substantial noninfringing
use, shall be liable as a contributory infringer."

1 32. The '298 Patent, as set forth in the claims, protects: "a system for the distribution of
2 multimedia content and the consummation of transactions between content owners, content
3 distributors and consumers". Defendant uses systems for the distribution of multimedia content
4 and the consummation of transactions between content owners, content distributors and consumers
5 and provides components for such systems for use by customers and users. Defendant supplied
6 components which constitute a material part of the system of the invention, knowing the
7 components to be especially made and adapted for use in an infringement of the '298 Patent and the
8 components are not a staple articles or commodities of commerce suitable for substantial
9 noninfringing use. Defendant's components are combined into accused systems and Defendant is a
10 contributory infringer of the '298 patent.

11 33. Defendant's knowledge that components contributed by Defendant were especially
12 made or especially adapted for use in an infringing manner is evidenced by the NDA entered
13 between by Mr. Robb and Defendant to discuss the possibility of entering into a patent licensing
14 agreement for the '298 Patent.

15 34. Defendant has contributed to the infringement of the '298 Patent through its
16 contribution of components to accused infringing systems which infringe claims of the '298 Patent.

17 35. Plaintiff is the owner of all rights, title and interest in and to and has had standing
18 to sue for infringement of the '298 Patent.

19 36. Upon information and belief, Defendant currently contributes to the infringement
20 and has contributed to the infringement of one or more of the claims of the '298 Patent under 35
21 U.S.C. § 271(c) by the activities as described above.

22 37. Plaintiff is entitled to recover damages from Defendant including reasonable
23 royalties and lost profits, sustained as a result of Defendant's infringing acts under 35 U.S.C. § 271
24 and § 284.

25 38. Defendant has been aware of Plaintiff's rights in the patent in suit and of Plaintiff's
26 intent to enforce those rights. Defendant has, with full knowledge of those rights, willfully
27 proceeded to infringe, in disregard of Plaintiff's rights. Plaintiff is entitled to enhanced damages
28 under 35 U.S.C. § 284.

1 39. Plaintiff is entitled to damages for contributory infringement as set forth in 35 USC
2 285 and 285.

3 **V. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 5 a. That Defendant be held to have infringed the '298 Patent under 35 U.S.C. §
6 271(a)(b) and (c).
7 b. That Defendant has acted with knowledge of the '298 Patent.
8 c. That judgment be entered for Plaintiff against Defendant, for Plaintiff's damages
9 according to proof, and for any additional damages attributable to infringements of
10 Plaintiff's patent rights and for enhanced damages under 35 U.S.C. § 284 and § 285.
11 d. That judgment be entered for Plaintiff against Defendant, adequate to compensate
12 Plaintiff, for reasonable royalties and/or other statutory damages based upon
13 Defendant's acts of patent infringement and for its other violations of law under 35
14 U.S.C. § 271, § 284 and § 285.
15 e. That Defendant be required to account for all gains, profits, and advantages derived
16 from its acts of infringement and for its other violations of law and that Plaintiff be
17 awarded damages in the amount of such profits under 35 U.S.C. § 284 and § 285.
18 f. That the actions of Defendant be found willful.
19 g. That judgment be entered for Plaintiff and against Defendant, for enhancement of
20 the damages awarded for patent infringement under 35 U.S.C. § 284 and § 285.
21 h. That the actions of Defendant be found exceptional under 35 U.S.C. § 285.
22 i. That Plaintiff be granted judgment against the Defendant for Plaintiff's costs and
23 attorney's fees under 35 U.S.C. § 285 and/or the inherent powers of the Court.
24 j. That the Court grant such other, further, and different relief as the Court deems
25 proper under the circumstances.

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VI. DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury on all issues raised by the complaint which are properly triable to a jury.

Dated: August 31, 2018

Respectfully submitted,

The RBV Law Firm

/s/ Richard B. Vaught

Richard B. Vaught, Esq.
Attorneys for Plaintiff

Dated: August 31, 2018

Respectfully submitted,

DNL ZITO CASTELLANO

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